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10/581,825	06/28/2007	Peter Booth	13877/37701	7175
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KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			SMALLEY, JAMES N	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,825	<b>Applicant(s)</b> BOOTH ET AL.
	<b>Examiner</b> JAMES N. SMALLEY	<b>Art Unit</b> 3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 July 2011.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-34 and 37-49 is/are pending in the application.
  - 4a) Of the above claim(s) 5,9-13,16-18,20,21,26,27,29,32,33 and 40-43 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,6-8,14,15,19,22-25,28,30,31,34,37-39 and 44-49 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 June 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-592)                                | 4) <input type="checkbox"/> Interview Summary (PTO-419)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Election/Restrictions***

1. Applicant's election with traverse of Figures 1-3A in the reply filed on July 27, 2011 is acknowledged. The traversal is on the ground(s) that the elements are grouped together to form a single general inventive concept. This is not found persuasive because Examiner asserts that the Special Technical Feature is the element that is common to all embodiments, which makes a contribution over the prior art. In this case, the only thing common among all embodiments is a pivoted flap to secure a lid on the container. There is a plethora of resilient hinges in the prior art, including ones which pass over the rim of the container, as applied below under 35 U.S.C. 102(b), and thus there is no special technical feature present. Moreover, Applicant asserts that because a patent was issued in Great Britain, that the Election of Species is improper. Examiner notes that whether or not a foreign patent has been granted on an application has no relevance to the prosecution of US national Stage patent applications. Finally, Applicants argue that the election is "overly restrictive" because it identifies 11 different species. Examiner notes that the groups are made based on the application, and that Applicant has presented 11 structurally different embodiments, which again lack a special technical feature. Examiner notes that Applicant can rejoin claims upon the allowance of a generic independent claim.

The requirement is still deemed proper and is therefore made FINAL.

2. Applicant has identified claims 1-16, 19-31, 33, 34 and 37-49. However, Examiner notes multiple claims from the identified group do not read on the elected embodiment of Figures 1-3A, and a breakdown is provided below:

Claim 5 - - appears drawn to the embodiment of Figure 4, as supported by the Specification's disclosure on page 9 therein.

Claim 9 - - no locking member is hinged to the container in Figures 1-3A.

Claim 10 - - appears drawn to the embodiments of Figures 14 and 15.

Claims 11 and 12 - - depend from claim 10.

Claim 13 - - appears drawn to the embodiments of Figures 8, 9 and 15.

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Claim 16 - - appears drawn to the embodiments of Figures 8 and 9.

Claims 17 and 18 - - were not identified by Applicant as reading on the elected embodiment.

Claim 20 - - appears drawn to the embodiment of Figure 15.

Claim 26 - - appears drawn to the embodiment of Figures 10 and 11.

Claim 27 - - appears drawn to the embodiment of Figures 8 and 9.

Claim 29 - - appears drawn to the embodiment of Figure 4, as supported by the Specification's disclosure on page 9 therein.

Claim 32 - - was not identified by Applicant as reading on the elected embodiment.

Claim 33 - - appears drawn to the embodiment of Figures 8 and 9.

Claim 40 - - no locking member is hinged to the container in Figures 1-3A.

Claim 41 - - appears drawn to the embodiments of Figures 14 and 15.

Claim 42 - - depends from claim 41.

Claim 43 - - appears drawn to the embodiments of Figures 8 and 9.

3. Examiner identifies claims 1-4, 6-8, 14, 15, 19, 22-25, 28, 30, 31, 34, 37-39, and 44-49 as reading on the elected embodiment of Figures 1-3A, and proceeds with the examination of these claims as follows.

***Priority***

4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Specification***

5. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use. Examiner notes the instant Specification does not use the appropriate headers.

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**Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Objections***

6. Claim 19 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Examiner notes all limitations of claim 19 appear to be in independent claim 1.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 14, 15, 19, 22, 28, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer et al. US 3,416,701.

**Regarding claim 1,** Kramer '701 teaches a container (11) having a peripheral wall (16) defining a rim (unlabeled but clearly shown), and a cover (12), with the assembly being provided with at least one locking member (17) that is hingeable between a locked and unlocked position having a locking member (20) engaging a corresponding locking feature (21) on the assembly in the locked position, and which passes over the rim of the container and cover, between the locked and unlocked positions.

**Regarding claim 2,** the locking member is upwardly hinged.

**Regarding claim 3,** the closing surface is read as the lid top wall (12) and this is continuous with the locking depression (21) and thus the locking member hinges onto the closing surface.

**Regarding claim 4,** the locking member hinges so as to dispose the free end within an area defined by the cover rim, as shown in Figure 1.

**Regarding claim 6,** the limitations of the claim have been shown in the prior art with respect to claims 1 and 2 above.

**Regarding claim 14,** the cover includes an inside sealing surface (unlabeled; clearly shown as an annular bead/flange depending from the undersurface of cover wall 12, and sealing against the container wall 16 inner surface, in Figure 1.

**Regarding claim 15,** the instant Specification notes, on page 8, that the connection between projections (24) and (26) comprises a "snap fitting." Examiner notes Kramer '701, Figure 1, shows a similar connection between projection (20) and cover rim (21) and thus the prior art device comprises as much of a snap connection as that of the instant invention.

**Regarding claim 19,** the locking member includes engagement feature (20) which engages over a rim of the cover in the locked position, as shown in Figure 1.

**Regarding claim 22,** the reference teaches two locking members (17) in Figure 1.

**Regarding claim 28,** each locking element (17) is provided with an engagement feature (20) to engage an inside surface of a cover rim at (21).

**Regarding claim 31,** the container and lid are formed of "polystyrene foam" as taught in col. 2, line 6, which is read as a "molded plastic."

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**Regarding claim 37,** the locking member hinges so as to dispose the free end within an area defined by the cover rim, as shown in Figure 1.

**Regarding claim 44,** the cover includes an inside sealing surface (unlabeled; clearly shown as an annular bead/flange depending from the undersurface of cover wall 12, and sealing against the container wall 16 inner surface, in Figure 1.

**Regarding claim 45,** the instant Specification notes, on page 8, that the connection between projections (24) and (26) comprises a "snap fitting." Examiner notes Kramer '701, Figure 1, shows a similar connection between projection (20) and cover rim (21) and thus the prior art device comprises as much of a snap connection as that of the instant invention.

**Regarding claim 46,** the locking member includes engagement feature (20) which engages over a rim of the cover in the locked position, as shown in Figure 1.

**Regarding claim 49,** the container and lid are formed of "polystyrene foam" as taught in col. 2, line 6, which is read as a "molded plastic."

9. Claims 1-4, 6-8, 15, 19, 22, 24, 25, 28, 30, 31, 37-39, 45, 46, 48 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Tutton et al. US 5,695,087.

**Regarding claim 1,** Tutton '087 teaches a container (12) having a peripheral wall (14) defining a rim (read as the top of wall 14, but NOT read as element 18) and a cover (12), with the assembly being provided with at least one locking member (34) that is hingeable between a locked and unlocked position having a locking member (42) engaging a corresponding locking feature (18) on the assembly in the locked position, and which passes over the rim of the container and cover, between the locked and unlocked positions (detent strap 44 engages over the container rim depression 16).

**Regarding claim 2,** the locking members (34) hinge upwardly.

**Regarding claim 3,** the cover teaches closing surface (10) which the locking member hinges onto at (50, 54) in Figure 4B.

**Regarding claim 4,** the free ends of the latch (42, 46) are disposed within the area defined by the rim, as shown in Figures 4B and 5.

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**Regarding claim 6**, the limitations of the claim have been shown in the prior art with respect to claims 1 and 2 above.

**Regarding claim 7**, the locking member (34) is hinged to the bottom of the skirt. The term "integrally" is not read as integrally molded in one piece (a living hinge) but is only read that the elements be interconnected into a unitary device.

**Regarding claim 8**, the locking member (34) is hinged to the bottom of the skirt as shown in Figure 6.

**Regarding claim 15**, the cover detent strap (44) snaps onto the cover at (50, 54).

**Regarding claim 19**, detent strap (44) engages over the container rim (16), even though it does not actually engage the rim itself. However, Examiner notes the claim does not limit this. In other words, the detent strap (44)'s engagement at (50, 54) occurs at a location which is above container rim notch (16).

**Regarding claim 22**, the reference teaches two locking members (17) in Figure 1.

**Regarding claim 24**, the reference shows a channel in Figure 5, formed of sidewall (22), top wall (26), and an unlabeled radially-inner vertical wall.

**Regarding claim 25**, Examiner notes that because of recess (22), the locking member (34) lies flush with the container skirt. See Figure 3.

**Regarding claim 28**, the locking member (34) has an engagement feature (54) which engages with an inside rim (50) of the cover.

**Regarding claim 30**, the container teaches an outwardly directed projection (18) and the corresponding feature is an inwardly directed projection (42) on the locking element (34), which is read as being part of the skirt since they are interconnected as shown in Figure 6.

**Regarding claim 31**, the reference teaches forming the container and lid from plastic in col. 2, lines 5-7.

**Regarding claim 34**, the limitations of the claim have been identified above in the prior art, with respect to claims 1, 3 and 30, and 37 below.

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**Regarding claim 37,** the locking member hinges so as to dispose the free end within an area defined by the cover rim, as shown in Figures 3, 4B, and 5.

**Regarding claim 38,** the cover has closing surface (10) and a skirt (22) from the locking member (34) is hingeably connected.

**Regarding claim 39,** Examiner notes the term "integrally" is not read as integrally molded in one piece (a living hinge) but is only read that the elements be interconnected into a unitary device.

**Regarding claim 45,** the cover detent strap (44) snaps onto the cover at (50, 54).

**Regarding claim 46,** detent strap (44) engages over the container rim (16), even though it does not actually engage the rim itself. However, Examiner notes the claim does not limit this. In other words, the detent strap (44)'s engagement at (50, 54) occurs at a location which is above container rim notch (16).

**Regarding claim 48,** the reference shows a channel in Figure 5, formed of sidewall (22), top wall (26), and an unlabeled radially-inner vertical wall.

**Regarding claim 49,** the reference teaches forming the container and lid from plastic in col. 2, lines 5-7.

10. Claims 1-4, 6, 14, 19, 22-24, 37, 44 and 46-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Varker US 2,129,250.

**Regarding claim 1,** Varker '250 teaches a container having a peripheral wall (1) defining a rim (2), and a cover (8), with the assembly being provided with at least one locking member (6) that is hingeable between a locked and unlocked position having a locking member (12) engaging a corresponding locking feature (11) on the assembly in the locked position, and which passes over the rim of the container and cover, between the locked and unlocked positions.

**Regarding claim 2,** the locking member is upwardly hinged.

**Regarding claim 3,** the center portion (8) of the cover is the closing surface, and wherein the locking member (6) hinges onto the closing surface (11, which is integral with 8).

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**Regarding claim 4,** the locking members hinge to dispose their free ends within the rim, as clearly shown in Figures 2 and 3.

**Regarding claim 6,** the limitations of the claim have been shown in the prior art with respect to claims 1 and 2 above.

**Regarding claim 14,** the cover has an inner vertical wall (unlabeled) between apron (10) and center panel (8) which makes sealing contact with the container inner surface, as seen in Figure 3.

**Regarding claim 19,** the locking members (6) have an engagement feature (12) which engage over a rim of the cover.

**Regarding claim 22,** the reference teaches four locking members (6), as seen in Figure 2.

**Regarding claim 23,** the reference teaches a circular configuration in Figure 2.

**Regarding claim 24,** the reference shows a cover channel in Figure 3, into which packing (11) is disposed.

**Regarding claim 37,** the free ends of the locking members (6) are disposed within the rim, as shown in Figure 2.

**Regarding claim 44,** the cover has an inner vertical wall (unlabeled) between apron (10) and center panel (8) which makes sealing contact with the container inner surface, as seen in Figure 3.

**Regarding claim 46,** the locking members (6) have an engagement feature (12) which engage over a rim of the cover.

**Regarding claim 47,** the reference teaches four locking members (6), as seen in Figure 2.

**Regarding claim 48,** the reference shows a cover channel in Figure 3, into which packing (11) is disposed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 11 am - 7:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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